

1871. present facilitating the commission of Chimá's offence, her  
 REG. offence, according to Sec. 114 of the Indian Penal Code, was  
 v. identical with Chimá's, and as there could be no extenuating  
 CHIMÁ. circumstance in her favour that would not operate in her  
 daughter's favour also, the charge against her should not  
 have been reduced to one of a less serious character without  
 any alteration of that against the daughter. The Court  
 reverses the conviction and sentence passed against Chimá,  
 and directs that she be discharged.

*Conviction and sentence reversed.*

Aug. 31.

REG. V. KÁ'SHINÁ'TH BACHÁ'JI BĀ'GUL.

*Defamation—Ind. Pen. Code, Sec. 499, Exceptions 8 and 10—Letter  
 written to protect Religious Interests of Writer—Good Faith.*

A letter written by a Bráhmaṇ to the Bráhmaṇ community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Bráhmaṇ community, if written in good faith, falls within Exceptions 8 and 10 of Sec. 499 of the Indian Penal Code.

THE Acting Assistant Session Judge of Tháná, George Ayerst, convicted the accused, Káshináth Bacháji Bāgul, of defamation (under Sec. 499 of the Indian Penal Code), and sentenced him to pay a fine of Rs. 200, or in default of payment three months' simple imprisonment. Káshináth paid the fine.

The alleged defamation was contained in a letter which the accused, with several other persons, signed on the 8th of January 1871, and sent to the heads of the Bráhmaṇ community at Birvádi, in the Mahád táluká. The following extracts from the translation of the letter sufficiently show its import and the circumstances under which it was written :—

“TO ALL THE BRA'HMANS OF KASBE BIRVA'DI.

“Moro Vishvanáth Bāgul, Káshináth Bacháji Bāgul, and others, beg to inform you that we received your letter dated Poush Shudh, addressed to Moro Vishvanáth. The reply to it, and the other circumstances, are as follows :—

“ On information being received by us that Trimbak Hari Joshi, grandson of Janárdan Joshi, had committed adultery with a woman of the lowest caste, inquiries commenced in our village, when several began to endeavour to prove falsely the innocence of the said Joshi. In the committee assembled, instead of taking proper proof and duly considering it, several gentlemen joined the Joshi through influence, and wrote a letter to the Mahád men, stating that it was merely an accusation, and asking them how they were to act in it, and signed the same, and obtained the signatures of others through deceit, and did not take the signatures of those who were opposed to it. On this letter being sent to Mahád, we wrote another letter against it, signed by the villagers, to the Mahád men, who in reply required us to be there with proof. On which we stated the origin of the matter, as it existed, with other circumstances, at length, as came to our knowledge, and sent it to them with their letter and other depositions taken at Satván, and on the day appointed to assemble at Mahád we went there with the witnesses, &c., in the matter. The meeting assembled at Mahád, and the inquiries commenced, when I mentioned my evidence, and stated honestly on oath all the circumstances, which the Mahád men disregarded *in toto*, and took the deposition of the woman alleged to have been in adultery, and one or two other Mahárs brought by the accused at his expense, with an intention to prove the falsity of the charge against the Joshi. But although the witnesses told lies, yet their lies might have turned out true had their statement been written as given; but they were written keeping the Joshi in mind. But what of that? Can it be applauded by sages? Those who looked to the real things saw at the very time that the matter regarding the Joshi was not maturely considered, and that the depositions were false, &c. Such was the matter. Therefore, we are so much convinced of the Mahád assembly, that, however the matter might stand, they meant to acquit the Joshi Bává. We declare from the above circumstances that the above inquiry was not conducted impartially.

\* \* \* \* \*

“ We have communicated to you these things as they took place, and we are satisfied that they are true. We did not communicate them to you through animosity, or with the intention that a Bráhmaṇ should be found guilty. We did so thinking that otherwise our religion should be polluted this very day. The Almighty, Who lives in the hearts of all, is witness to this. This fact will be seen by Him, Who will consider it impartially. That it is true will also be seen on a minute inquiry in Vinhere and all the villages near it.

\* \* \* \* \*

“ If you will ask why the persons living in the accused's house be also considered guilty with him, then, from the papers sent (it will be seen that) all the persons, including the principal offender, are of one mind, and it will be seen as stated that they purified him by applying cowdung (to his body).

“ We do further inform you that to this day the principal offender, Trimbak, has been taking meal, water, &c. with and from the members of his family, and the Joshis who have built the temple of Shrishankar do

1871.

REG.

v.  
KA'SHINA' TH  
BACHA'JI  
BA'GUL.

1871.

REG.

KA'SHINA'TH  
BACHA'JI  
BA'GUL.

allow him as yet to worship the god. Therefore, it should also be considered what persons are guilty, and of what offences.

\* \* \* \* \*

"I have informed you of this with the intention that the offence committed may not spread among all the Bráhmans, and that all should not be ruined. It is not proper that I should walk through every village with the evidence of it, because it is the business of the whole caste. They should make inquiries, and take the evidence that can be obtained. We have given the details of the facts, happened as they came to us. It is yours to consider all this.

"It appears that other caste men of the surrounding villages are taking steps not to call the Joshi, he being the village priest.

\* \* \* \* \*

"MORO VISHWA'NATH BA'GUL,  
KA'SHINA'TH BACHA'JI BA'GUL,  
and others.

The complaint in this case was preferred, not by Trimbak, but by the woman Nági. The Assistant Session Judge recorded the following reasons for finding Káshináth guilty of defamation :—

"He (Káshináth) has admitted having signed the letter. This letter is addressed to all the Bráhmans at Bivrádi, and was read aloud at a public meeting in Mahád. The general purport of the letter is to impute unchastity to a Bráhman by name Trimbak, and a low-caste woman, who is proved by other evidence to be a Mahárin, named Nági, the complainant in this case, with reference to a rumour that they had adulterous intercourse together. It has been argued for the accused that this was done with no bad intention, but merely in the interests of the Hindú religion. I think that is an offence within the definition of Sec. 499 of the Indian Penal Code, and, in my opinion, none of the exceptions therein specified apply to the present case. Starling (Indian Criminal Law and Procedure, page 369) lays down that 'in all cases where the matter is defamatory in its nature, the *onus* of proving the truth of the statement, or at least that he had reasonable grounds for believing it to be true, and was actuated in making such a statement, not by malicious motives, but by intelligent zeal for the public interests, lies on the person making the statement.' He must, therefore, in such cases first prove the truth, or his

reason for believing the truth, thereof; but in this case not a tittle of evidence has been offered in support of the truth of this most calumnious allegation. No such imputation, unless made on reasonable grounds, can be held to be made for the public good. It is pleaded that these persons are Hindús, and as such were justified in circulating this rumour in the interests of their religion. I know, however, of no especial law exempting Hindús from the operation of Secs. 499 and 500, and if they choose to make rash and unfounded assertions or imputations against the characters of others they must bear the penalty provided by the law. The general purport of this letter is that, although the charge brought against Trimbak was held by the caste not to have been proved, yet he was wrongfully acquitted, the charge being that of committing adultery with Nági. By this the characters of both persons are aspersed."

From the conviction and sentence passed by the Assistant Session Judge the accused, Káshináth Bacháji, preferred an appeal to the High Court. The appeal was argued before MELVILL and KEMBALL, JJ., on the 31st of August 1871.

*Nánábhái Haridás* (with him *Bhairavnáth Mangesh*), for the accused, Káshináth Bacháji:—The letter alleged to have been sent to the Bráhmans of the village of Bírvádí is not defamatory. As having been written in accordance with the customs and usages prevailing among Hindús from time immemorial, in good faith, and for the protection of the religious interests of the Hindús in general, and of the writers in particular, the case clearly comes within the ninth exception of Sec. 499 of the Indian Penal Code. The letter does not show that it was the intention of the writers to injure the character of the woman Nági, nor is there one single word in it to indicate that she was the person intended. The decision of the Assistant Session Judge is opposed to the weight of evidence.

*Dhirajlál Mathurádás* (Government Pleader) appeared in support of the conviction and sentence.

PER CURIAM:—The Court thinks it doubtful whether the letter can be considered defamatory of the complainant, Nági,

1871.

REG.

v.

KA'SHINA'TH

BACHA'JI

BA'GUL.

1871.  
REG.  
v.  
KA'SHINA'TH  
BACHA'JI  
BA'GUL.

who is not named in it, nor indicated by any more direct expression than "a woman of the lowest caste." The person really defamed, if any one, was Trimbak, who has not come forward to complain: and his unwillingness to do so gives an unsatisfactory aspect to the case. But, however this may be, the Court is of opinion that the object of the prisoner having been to obtain a decision from the Bráhmaṇ community of the neighbourhood on a matter affecting his own religious interests and that of the Bráhmaṇ community, the appellant is entitled to the benefit of Exceptions 8 and 10, Sec. 499 of the Indian Penal Code, if the letter was written in good faith; and on review of all the circumstances of the case, the Court is not prepared to say that the letter was written otherwise than in good faith.

*Conviction and sentence reversed.*